Remarks/Arguments

Responsive to the restriction requirement, Applicants provisionally elect Group I with traverse. The restriction requirement divided the claims into the following Groups:

I. Claims 1-7 directed to a polypeptide immunogen comprising an amino acid sequence at least 85% identical to SEQ ID NO: 1, which provides protective immunity against *S. aureus* and does not contain amino acids 261-294 of SEQ ID NO: 7 and a composition containing the same;

II. Claims 8-10 directed to nucleic acid comprising a nucleotide sequence encoding the polypeptide of Group I;

III. Claim 11 directed to a method of making a polypeptide that provides protective immunity using a recombinant cell comprising the nucleic acid; and

IV. Claims12-15 directed to a method of inducing a protective immune response in a patient by administering the polypeptide of Group I.

The restriction requirement is based on Brummel et al., (WO 03/011899) on page 140, claims 4-12 and pages 10-16, allegedly describing a polypeptide of claim 1. The examiner indicates that the WO 03/011899 polypeptide is at least 85% identical to SEQ ID NO: 1 and does not contain amino acids 261-294.

Original claim 1 refers to a carboxyl terminus that does not contain amino acids 261-294 of SEQ ID NO: 7. Applicants note that the carboxyl terminus of SEQ ID NO: 1 following the LPXTG motif starts at about amino acid 318, not 261 as indicated in the application. Reference to amino acids 261-294 is based on numbering starting form SEQ ID NO: 1 (which does not contain the leader sequence), rather than the full-length sequence.

To clarify the polypeptide of claim 1, the claim was amended to indicate "consisting of an amino acid sequence with up to 26 amino acid alterations from SEQ ID NO: 1". Support for the amendment is provided in the application on page 7, second full paragraph. WO 03/011899 does not appear to describe a polypeptide as provided in claim 1.

Claim 5 was made into an independent claim to more clearly allow for an additional region or moiety beyond the 26 amino acid alterations, where the additional region or moiety is not a sai-1 region. Support for the amendment to claim 5 is provided in the application, for example, on page 3, second paragraph.

The originally presented method of claim 12 provides a broader description of the polypeptide of original claim 1 and does not exclude amino acids 261-294 of SEQ ID NO: 7. Claim 12 was not amended. Claim 15 which depends from claim 12 originally referred to the polypeptide of claim 1, and was amended to incorporate the present polypeptide description provided in claim 1.

The present response also includes an amendment to claim 2 and the addition of claims 16-20. Support for the amendment to claim 2 and new claim 16 is provided in the application on page 7, second full paragraph. Support for new claims 17-19 is provided in the application on page 7, second full paragraph (providing percent identity) and page 8, fifth paragraph (providing substantially purified). Support for new claim 20 is provided on page 7, second full paragraph.

Applicants' arguments concerning the restriction requirement are directed to the Unity of Invention argument presented by the examiner and are not arguments concerning the patentability of one claim or group of claims in light of another claim or group of claims.

Also provided with this response is an IDS for the examiner's consideration.

Please charge deposit account 13-2755 for fees due in connection with this amendment. If any time extensions are needed for the timely filing of the present amendment, applicants petition for such extensions and authorize the charging of deposit account 13-2755 for the appropriate fees.

Respectfully submitted,

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